



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 27, 1992

Ms. Janet I. Monteros  
Assitant Attorney General  
General Litigation Division  
P. O. Box 12548  
Austin, Texas 78711-2548

OR92-265

Dear Ms. Monteros:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15797.

The Texas Board of Licensure for Nursing Home Administrators (the "board"), which you represent, has received a request for information relating to an investigation of an individual licensed by the board. Specifically, the requestor seeks "copies of [the board's] investigative file regarding Barbara Doyle and the circumstances surrounding the death of Miguel A. Pineda, Jr." You have submitted to us for review a Texas Department of Health (TDH) complaint investigation, a letter dated January 14, 1992, to the Heritage Manor Care Center of Hondo, regarding an inspection of their facility conducted in response to a complaint, a TDH letter dated January 14, 1992, to the Texas Department of Human Services, and a board investigative report. You claim that this information relates to an anticipated disciplinary hearing and is therefore excepted from required public disclosure by section 3(a)(3) of the Open Records Act. You also claim that this information is made confidential by statute and therefore excepted from required public disclosure by section 3(a)(1) of the Open Records Act.

Previous open records decisions issued by this office resolve your request. Section 3(a)(3) excepts

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or

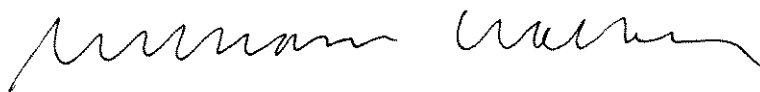
employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) applies only when litigation in a specific matter is pending or reasonably anticipated and only to information clearly relevant to that litigation. Open Records Decision No. 551 (1990). The litigation exception may be applied to records relating to a contested case before an administrative agency subject to the Administrative Procedure and Texas Register Act (APTRA) V.T.C.S., article 6252-13a. Open Records Decision Nos. 588 (1991); 368 (1983).

Section 3(11) of article 4442d, V.T.C.S., the Nursing Home Administrators Licensure Act, provides that the board is subject to APTRA. You advise us that the requested information relates to an investigation of an individual licensed by the board and that the matter is pending disciplinary review. Accordingly, we conclude that litigation is pending. Having examined the documents submitted to us for review, we further conclude that they relate to the litigation and may be withheld from required public disclosure under section 3(a)(3) of the Open Records Act. Please note that this ruling applies only until the resolution of the matter and to the documents at issue here. As we resolve this matter under section 3(a)(3), we need not address the applicability of section 3(a)(1) at this time.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-265.

Yours very truly,

A handwritten signature in black ink, appearing to read 'William Walker', with a stylized flourish at the end.

William Walker  
Assistant Attorney General  
Opinion Committee

WW/GK/lmm

Ref.: ID# 15797

cc: Mr. Pascual Madrigal  
Attorney at Law  
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